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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,666	11/02/2001	Klaus-Helmut Muller	Mo-6727/LeA 33,672	6605

34469 7590 10/22/2003

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EXAMINER

RAO, DEEPAK R

ART UNIT	PAPER NUMBER
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1624

DATE MAILED: 10/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/980,666

Applicant(s)
Muller et al.

Examiner
Deepak Rao

Art Unit
1624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jul 28, 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 16, 20, and 21 ☒ are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 7, 8, 10, 11, 16, 20, and 21 ☒ are rejected.
- 7) ☒ Claim(s) 2, 3, 5, 6, 9, and 12-14 ☒ are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 5 6) ☐ Other:

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DETAILED ACTION

Claims 1-14, 16 and 20-21 are pending in this application.

Election/Restriction

Applicant's election with traverse of Group I, claims 1-14, 16 and 20-21 in Paper No. 8 is acknowledged. The traversal is on the ground(s) that the examination would not have been burdensome. This is not found persuasive for the reasons provided in the previous office action. Applicant has not provided any specific reasons to support the traversal and further, the non elected claims 17-19 have already been canceled.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 U.S.C. § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim recites the limitation "R₄ represents hydrogen" in line 2. There is insufficient antecedent basis for this limitation in claim 1 on which claim 11 is dependent. Claim 1 does not define R₄ to be hydrogen.

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Claim Rejections - 35 U.S.C. § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 7, 8, 10, 11, 16, 20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Von Deyn et al., WO 96/26192. The instant claims read on reference disclosed compounds, see the structural formula (I) and the corresponding species of compound no. 1.93-1.95. The reference also teaches a process to prepare the compounds, see page 3. The reference teaches that the compounds are useful as herbicidal agents, see page 27, starting at line 11.

Allowable Subject Matter

Claims 2, 3, 5, 6, 9, 12, 13 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Note: Applicant's attention is directed to U.S. Patent 6,624,121 which while not competent reference against the instant claims, claims subject matter that is substantially similar to that claimed herein (the instant Z definition includes a tetrazolone group). Unless applicants

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can demonstrate that the claims are patentably distinct from the claims in this US patent, the only way to overcome these patents is by way of interference proceedings or removal of the conflicting subject matter. See MPEP § 2306.

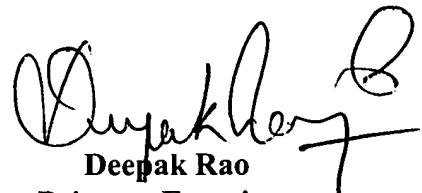
Receipt is acknowledged of the Information Disclosure Statement filed on October 4, 2002 and a copy is enclosed herewith.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deepak Rao whose telephone number is (703) 305-1879. The examiner can normally be reached on Tuesday-Friday from 6:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Mukund Shah, can be reached on (703) 308-4716. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.


Deepak Rao
Primary Examiner
Art Unit 1624

October 20, 2003